The Cochin Tenancy Bill.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*— I beg to move that the Cochin Tenancy Bill be taken up and finally passed.

I second it.

Motion was put and carried.

The Cochin Municipal Bill.

Mr. President.—The question is that section 184, the consideration of which had been postponed, stand part of the Bill.

Mr. A. Sivarama Menon *(Mulakunnathukavu).*— Mr. President, Sir, I beg to move the following amendment to the amendment proposed by the Law Member to section 184. *Add 'after consulting that particular Council' between 'exempt' and 'any class'.* The amended proviso will read:—"Provided that the Government may in respect of all Municipalities exempt all buildings or any class of buildings from all or any of the provisions of this chapter or the said rules and in respect of any particular Municipality exempt, after consulting that particular Council, any class of buildings from all or any of the provisions of this chapter or the said rules."

Amendment as modified was put and carried.

Section 184 as amended was put and carried.

Mr. A. Eachara Menon *(Chittur-Rural).*—I beg to move the following amendment:—

Add as section 234 A :—

"Whoever tethers cattle or other animals or causes or suffers them to be tethered by any member of his family or household in any public street or place so as to obstruct or endanger the public traffic thereon or to cause nuisance or who causes or suffers such animals to stray about without a keeper shall be punished with fine which may amount to Rs. 25."

The nuisance caused to the public by allowing cattle to stray about is known to this place as well. The nuisance caused to the traffic by allowing these tethered cattle to stray about is larger. It cannot be known well here. The chief animals that are tethered are the horses and asses. I can give a clear idea

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to the House if I only narrate what happened there when an ass was left tethered in the market road. A boy went after it and beat it. It kicked the boy and the boy lost a tooth. In the case of the asses the pounds do not serve for there will be none to bid them in auction. Therefore the authorities have to let them go their way. It is very necessary that such a section should be in the Act.

Mr. M. Sivarama Menon *(Ernakulam South).*—Sir, while not opposing the amendment I wish to suggest that the term 'or to cause nuisance' does not appear to be happy in that amendment because there is a separate chapter dealing with nuisance in the Municipal Act and we have amply provided for it there. It is Chapter XI.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—If the House wants this amendment, we have no objection.

Amendment as modified was put and carried thus carring section 234 A.

Sections 235 to 243 were put and carried.

Mr. A. Narayana Menon *(Vyttila).*—Sir, I beg to move the following amendment:—

In section 244 (1), after 'may' in line 2 add 'with the previous sanction of the Government and in compliance with the provisos to section 67'.

I shall read the section:—

"The Council may construct or provide and maintain public landing places, halting places and cart-stands and may levy rents and fees for the use of the same."

By adopting this amendment it will read thus:—

"The Council may with the previous sanction of the Government and in compliance with the proviso to section 67 construct or provide and manitain public landing places, halting places and cart-stands and may levy rents and fees for the use of the same."

By adopting this amendment we will be saving a very useful industry which is either crippled or ruined. As it is, the landing charges levied by two adjacent municipalities are different. In Ernakulam they charge only 2 annas while in Mattanchery they charge 4 annas. If one boat touches both Ernakulam and Mattanchery, landing charges have to be paid in both

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the places. Canal rules compel boats to touch both places. It is but proper that the rates are made uniform and that some arrangement is made as to whether both the municipalities can collect landing charges on the same day. Of course, these are details. What I insist upon is, that before the landing charges are levied, public criticism should be invited as to the rate and mode of levy; it is only after the consideration of the criticism that the charges should be levied. Section 67 provides for this. By adopting this amendment we shall be saving a very useful industry which on account of keen competition, and the vagaries of law has suffered considerably. I submit that the Municipalities are not going to lose much. We want uniformity of procedure in taxation.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—What industry?

Mr. A. Narayana Menon *(Vyttila).*—Plying of motor boats. Two or three concerns have been absolutely crippled by the large and unchecked powers conferred by the present Act to Municipalities. Mattancheri will charge 4 annas and Ernakulam 2 annas on the same day. On account of competition income has gone down abnormally and many have wound up their concerns. Without consulting the public or giving the public an opportunity to give their opinion, rates are fixed and enforced by Chairmen.

Mr. M. Sivrama Menon *(Ernakulam South).*—Question.

Mr. A. Narayana Menon *(Vyttila).*—So far as Mattancheri is concerned, I can assert that that is the case. Till 1104 Chingam there was absolutely no landing dues charged. We find in a Gazette published towards the end of 1103 a notification calling for tenders. Rates are seen mentioned there. Absolutely no criticism was invited. I presume that my Hon'ble friend also should have known something about it, because both of us were appearing in the same case. The notification did not show whether the matter was sanctioned even by the Council. So I commend this amendment for the acceptance of the House.

Mr. A. Eachara Menon *(Chittur Rural).*—I second it.

* **Mr. M. Sivarama Menon** *(Ernakulam South).*—I oppose this amendment. This amendment is a highly retrograde step. Under the provisions of the District Municipalities Act

* Speech not corrected by the Hon'ble Member.

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as well as under the existing Act in force in Cochin, the Councils are entitled to farm out the collection of landing charges and to collect them directly without the sanction of the Government. It is laid down in this Act itself that if any rules are to be framed under any section, they are to be published and it is only after one month's time that the rules can be considered by Government after receipt of objections. The rules ought to be followed as statutory enactments and public criticism also is invited upon the draft rules published in the Gazette either by the Council or by the Governmet and the Council by itself cannot bring it into effect, unless the sanction of the Government is obtained. To my knowledge, Government has not till this day passed any rule without inviting public criticism and in case any objection is received, the matter will be settled by the Municipal Councils and the Government. What the amendment says is this. If the Municipality wants to collect landing dues, the sanction of the Government is necessary. Even with regard to taxation, the Councils have been given the power. It will be evident from what transpired yesterday that it is only with regard to company's tax that the previous sanction of the Government was asked to be obtained, on account of the peculiar contentious nature of that tax. But with regard to the other taxes that are to be levied, the Municipal Councils may by themselves pass resolutions and determine the scale of tax to be levied because the Government has fixed a maximum and a minimum. The Council is competent to raise anywhere between the maximum and the minimum. That is the limitation placed. Then with regard to the landing dues which are matters of pure contract between contractors and the Municipal Council it is very hard to bring in an amendment to the effect that the previous sanction of the Government is necessary. If it is the object of the Hon'ble Member for Vyttila that public criticisms should be invited I may only inform him that there are strict rules to that effect and it is only after inviting public criticisms that the rules can be passed and the Council has to obtain Government sanction also. My submission, therefore, is that this amendment is not acceptable, when the taxation itself can be had without the previous sanction of the Government. Therefore I oppose this.

Mr. K. M. Kunhi Moideen *(Kattur)*. — What is the disparity in the rates of landing charges due to?

Mr. M. Sivarama Menon *(Ernakulam South)*.—The Councils used to fix their own fees obtaining Government sanction.

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With the institution of a Municipal conference in the State the rates are sought to be made uniform and this question was considered also in the conference but postponed because the new Municipal Bill is going to be passed into law. It will be found that after the inauguration of the Municipal Conference most of the rules have been brought on the same line by all the Municipalities. If at all there is any objection with regard to the rule it is not with regard to the statute which is now sought to be amended. In regard to any rule if any representation is made to Government it will be sent for remarks to all the Municipalities and their attention will be directed to them and they will be bound to consider them as a whole for the whole State.

Mr. M. V. Cherian *(Mattancherri South)*:— Therefore there will be a uniform rate.

Mr. M. Sivarama Menon *(Ernakulam South)*.—Certainly.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri)*.— Mr. President, I am surprised to find, Sir, that an amendment of this sort has been tabled by an Hon'ble Member like the Member for Vyttila. He is a gentleman as has been exhibited here often, who has always been fighting for popular causes and trying to get powers to autonomous institutions. He is a gentleman, Sir, who has whole heartedly supported a resolution very recently for the grant of responsible Government to Cochin as a whole. Such a gentleman getting up and saying that the power of the Municipality to levy rents and fees should be preceded by a previous sanction of the Government is simply surprising. It would show, himself a Municipal Councillor, once—I do not know whether he is a Municipal councillor now—that his experience has been that there is necessity for getting the previous sanction of the Government for levying rents of the type mentioned in section 244. If so, his impressions about the Municipality must certainly be of a very very low type, indeed. The Municipality an autonomous body must have the right to levy the rents which it thinks proper without the sanction of any one. It is because of this feeling that I oppose the amendment.

Mr. A. Narayana Menon *(Vyttila)*.—I am not very particular of obtaining the previous sanction of the Government. With regard to the invitation of public criticism, I am very particular. If that is going to be one of the items on which rules will be framed, I have absolutely no objection to withdraw

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the amendment. At the same time I have to mention that I take very serious objection to the way in which the matter was approached by the Hon'ble Member for Wadakancherri. My main object was to obtain public opinion upon the matter and make the rate uniform. My friend has been misreading and misinterpreting my motive. I submit that such sort of reflections, personal reflections, should be avoided in this House; the dignity of this House requires that. It is irresponsible statements of this type that act as breaks in our getting responsible Government.

Amendment was by leave withdrawn.

Sections 244 and 245 put and carried.

* **Mr. M. Sivarama Menon** *(Ernakulam South).*— The amendment that stands in my name is that *section 246 be omitted.* Section 246 is to this effect.—

"Where a Municipal Council has provided a public landing place, halting place or cart stand the executive authority may prohibit the use for the same purpose by any person within such distance thereof, as may be determined by the Municipal Council, of any public place or the sides of any public street."

The reason why I seek to amend this section is that it appears to me to conflict with the other Acts of the State which are in force in Municipal areas. The first is Hackney Carriage Act II of 1098. There is a penal section attached to that. That is section 37.

There is a penal section in the Hackney Carriage Act It is stated there 'Every driver of a Hackney carriage who stands esewhere than at some stand or at other place appointed for the purpose or loiters for the purpose of being hired in or upon any public street, road or lplace." Therefore, we find that under the Hackney Carriage Act there are certain places where alone these hackney carriages can be parked and if anybody violates that provision he could be prosecuted. In the municipal areas, there is also another Act which is in force., i. e., the Town Nuisances Act, IV of 1098. There is a section there 'Whoever causes any vehicle to remain or stand longer than may be necessary for loading or unloading except at places appointed for the purposes or fastens any horse or other animal so as to cause obstruction or in any way wilfully obstructs or causes obstruction to the free passage of any throughfare may be punished". So this section gives power to the Council to

* Speech not corrected by the Hon'ble Member.

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permit the parking of a carriage in a public place. Therefore this section comes into conflict with the section in the Hackney Carriage Act But section 246 in the Bill has reference only to public places. Suppose there is a cart-stand within a municipal area and the municipal council passes a rule that within one furlong on either side of that no vehicle can be loaded or unloaded for any purpose. That is not prohibited under the Town Nuisances Act. Therefore this section, if read along with the two sections in the above said regulation appears to give power to the Council by which these wholesome regulations may be abrogated. And because all these enactments are to be worked in the same Municipal area I thought this matter should be brought to the attention of Government. According to me there is some conflict. I have tried my best to reconcile with these two positions and I found I could not. If anybody commits a nuisance within a furlong of a cartstand no action can be taken against him according to the Hackney Carriage Act for it refers only to a public place. Section 246 of the Bill says 'where a Municipal Council has provided a public landing place, halting place or cart stand the executive authority may prohibit the use for the same purpose by any person within such distance thereof, as may be determined by the Municipal Council, of any public place or the sides of any public street.' That is for parking vehicles as determined by the Municipal Council.

Mr. Thomas Manjuran *(Government Advocate and Law Officer)*.—There is a distinction between that section and the sections read from the Hackney Carriage Act and the Town Nuisances Act. What is really a cart stand is dealt with in section 245 of the Bill. Any place within a Municipality cannot be called a cart stand. Section 245 says 'No person shall open for the purpose of hiring out, a new private landing place, halting place, bus-stand or cart-stand or continue to keep open a private landing place, halting place bus stand or cart stand within Municipal limits or at distance within one mile of such limits.' So that clause rules out the idea of starting, renting or encouraging such institutions. Section 246 only says that the executive authority may in cases of municpalities that have provided public landing places, halting places, cart stands the use for the same purpose by any person within such distance thereof, as may be determined by the Municipal Council, of any public place or the sides of any public street. But the Hackney Carriage Act prohibits the parking of a cart even for a moment outside the stand. The Town Nuisances Act deals with the causing of nuisances. If a cart is left on the public road or on the sides of street so as to cause nuisance to the public then

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action can be taken under the Nuisances Act. The whole section is for action against causing nuisances. If my Hon'ble friend the member for Ernakulam will read that section he will realise that there will be many empty spaces where the poor rickshaw or Jutka Valas may easily park their carriage and not pay anything to anybody. They even actually do that now. By this the Municipality may very well say let them do that. Supposing they are not willing they can also prohibit. Take the case of a town like Ernakulam, how many cart stands are there in all. We have two or three within a distance of 2 or 3 miles. It is prefectly clear that if there is no rule like this you will be making a violent inroad into the hackney carriage owner. You do not allow them to park in other places. Merely because we have got three or four cart stands should they be asked to take their carriages for two miles to park them. Nuisances Act deals only with cases where parking in unauthorised places causes nuisance.

Mr. M. Sivarama Menon *(Ernakulam South).*— According to the Hackney Carriage Act also carriages should not be parked in unauthorised places.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—It may be that in your Municipality there are no cart stands within a mile or two or within half a mile. Should the riksha valas be put to difficulty?

Mr. M. Sivarama Menon *(Ernakulam South).*—There is absolutely nothing in my amendment. I am prepared to with draw it. I am simply pointing out the inconsistent provisions in the laws.

Dr. A. R. Menon *(Pallippuram).*—Does the Government Advocate say that there should be cart stands within every half a mile in every Municipality? Will the Hon'le Member for Law point out or name any Municipality where there are cart stands for every half a mile? I think that no Municipality can provide a cart stand for every half a mile or even a mile. If there is ample space well and good. So we cannot accept the contention that a number of cart stands should be located even within one mile.

* **Mr. M. Sivarama Menon** *(Ernakulam South).*—Under the Hackney carriage Act they can park their vehicles only in that particular place. The Town Nuisances Act has control in

* Speech not corrected by the Hon'ble Member.

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addition to that area some area surrounding the cart stand. So we find that in a particular area both the Nuisances Regulation and Hackney Carriage Regulation can control. I apprehend some conflict between the two authorities. In one case it is absolute prohibition for any vehicle to park at any public street, road or place. That is in the Hackney Carriage Act. According to the Town Nuisances Act any vehicle can be allowed to remain for such time as is needed for loading and unloading. Suppose the Police Commissioner is exercising his functions under the Hackney Carriage Act in a Municipal area. He appoints certain places for the purpose of parking carts. Suppose the Municipal Council also says that the stands prescribed by the Commissioner of Police are also stands under the Municipal Act. A person who is found mis-using any public road within a furlong of this stand can be prosecuted by the Police Commissioner. But he can defend by saying that the Municipality has passed a resolution by which a limit has been fixed and that he is within those limits. It is only that that conflict of jurisdiction between two officers that I apprehend. And now that we are in the stage of legislation, I thought it proper to point it out to the Government.

Mr. President.—These are things for lawyers to settle.

Mr. A. Sivarama Menon *(Mulakunnathukavu).*—Sir, a Municipal Act like the one before the House will be incomplete if the section which we are considering now is deleted. If any conflict is apprehended at any time the section may be worded suitably. I would ask the Hon'ble Member for Ernakulam whether he can point out any Municipal Regulation without this corresponding section. I know that in every Municipal Act there is a corresponding section. So this section is absolutely necessary to make the Act complete. The most important point for us to consider here is whether we should not make ample provisions to improve the conveniences of the citizens of the Municipal areas.

Mr. M. Sivarama Menon *(Ernakulam South).*—Sanitary Officers are notified under the Municipal Act as the Police Officers in the Municipal area for this purpose. Therefore there will be confict between the Police and the Sanitary Inspectors. Wherever such cart-stands exist, the practice is the Commissioner of Police will declare such stands to be places for parking carts under the Municipal Regulation. Under the Hackney Carriage Act, if a man takes a vehicle to any other place, then he commits an offence. Under section 246 of the

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Municipal Act the Councils have got power to allow carts to park beyond the limits of these stands. Therefore if a person happens to be prosecuted under the provisions of the Hackney Carriage Act, a lawyer may come and say that under the Municipal Act 'I have every right to park my vehicle'.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—May I say a word, Sir. The Hackney Carriage Act does not apply to all the Municipalities. It cannot apply to boats. Then again if as a matter of fact, the Hackney Carriage Act provides this trouble, it is high time that the Hackney Carriage Act is so amended that no serious inconvenience is inflicted on the public. As observed by the Hon'ble Member for Mulakunnathukavu when we are passing a Municipal Regulation, let us see that provisions are made in it for meeting reasonable contingencies. If there is anything to be amended, we can amend. Without notice I am not in a position to say whether the amendment of the Hon'ble Member for Ernakulam is right or wrong.

Mr. M. Sivarama Menon *(Ernakulam South).*— I withdraw.

Amendment was, by leave, withdrawn.

Sections 246 to 248 were put and carried.

Mr. M. Sivarama Menon *(Ernakulam South).—In section 249 sub-section (4), clause (a)change 'Boilers' to 'Factories'.*

Amendment was put and carried.

Section 249 as amended was put and carried.

Sections 250 to 288 were put and carried.

Mr. M. Sivarama Menon *(Ernakulam South).*—I move that *in section 289 sub-section (9) omit the word 'unlicensed' in the second line and substitute the word 'or' in line 4 between the words 'suspended' and 'which'.*

But I am making a slight change in the amendment. I request that after the clause is amended it may be transposed to Chapter XVIII because that is the proper place for that section. Unfortunately while drafting it was misplaced. That is a clause which deals with the enforcing of identical provisions.

Mr. President.—First move and after passing, transpose.

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Mr. M. Sivarama Menon *(Ernakulam South).*— Sir, I formally move the amendment. The clause as it is reads. "The executive authority or any officer duly authorised by him in writing in that behalf may close any unlicensed dangerous and offensive trade in respect of which no license has been taken or license for which has been refused, with-held, revoked or suspended which is held or kept open contrary to the provisions of this Act."

I stress upon 'unlicensed dangerous and offensive trade in respect of which no license has been taken'. There is some redundancy here. A dangerous and offensive trade could be done only after the person has taken a proper license. So my point is if the Member for Law were contending that this section should give power to anyone to take to a dangerous trade without taking out a license there is another section in the Act itself that before a certain dangereus trade is begun, the person concerned should apply for a license. If anybody acts otherwise, it is contrary to the provisions of this Act. Therefore there is no necessity for that clause. It is just to improve the language that I brought forth my amendment. There is no substantial variation.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I am afraid there is some misunderstanding in the language of that clause. I shall try to explain and justify the language. I am not particular as to what language should be used. As it is the clause reads: "The executive authority or any officer duly authorised by him in writing in that behalf may close any unlicensed dangerous and offensive trade in respect of which no license has been taken or license for which has been refused, with-held, revoked or suspended which is held or kept open contrary to the provisions of this Act". If you read only so far as the word 'taken' in line 3 of the section, then it will obviously be meaningless. But if you read the rest of the section I hope it will be clear. The section goes on to explain the various reasons for which a trade is unlicensed viz., (1) in respect of which no license has been taken, (2) in respect of which license has been refused, (3) withheld, revoked etc. It only means that they are different illustrations. It is not so blindly wrong as the Hon'ble Member seems to think. These are only the varieties of unlicensed trade given for the use of the public. I think the whole difficulty arose since the Hon'ble Member's attention was probably diverted to one portion of the clause only. If there was a full stop after the word 'taken' it would have been meaningless.

Mr. A. Sankara Menon *(Trippunittura).*— I do not think that the section requires an amendment. I agree with

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the Law Member in his opinion. The words following 'unlicensed does not apply to dangerous and offensive trade in respect of which no license has been taken" but it applies to "dangerous and offensive trade held or kept open contrary to the provisions of this Act".

Mr. M. Sivarama Menon *(Ernakulam South).*—I withdraw the amendment.

Amendment was, by leave, withdrawn.

Mr. M. Sivarama Menon *(Ernakulam South).*—Sir, I beg to move that the marginal heading of this section may be changed to '*general provisions regarding licenses and permissions*'. This is just to put in line with the corresponding provision in the Madras District Municipalities Act. Now this chapter deals with only certain kinds of licenses. If this general section is included in this chapter a contention may reasonably be raised that the power under section 289 can be effected only in regard to licenses enforced under that section. This is a general controlling section with regard to licenses. In the Madras Act this appears under chapter XVI. There is also chapter XVI in our Bill, that is the Miscellaneous Chapter. This section should be transposed just after section 334 and the Heading also changed just like the Madras District Municipalities. This is only a mere interposition of section and I do not think that there will be serious objection to this.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—As at present understood I cannot appreciate the position. Now Chapter XII deals with licenses and fees. It contains several things for example general provisions as to licenses, keeping of animals, industries and factories, slaughtering, milk trade, etc. etc. Towards the end of this chapter comes this section; viz., the enforcement of the licensing provisions.

Mr. M. Sivarama Menon *(Ernakulam South).*—This provision must be made common to all.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—The fact that this section is numbered subsequently does not make a difference. Is there any provision for license after section 289?

Mr. M. Sivarama Menon *(Ernakulam South).*—In dealing with general provisions as to licenses I thought that the enforcement of licensing provisions must be in an appropriate place.

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Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—After section 282 there are no licenses provided.

Mr. M. Sivarama Menon *(Ernakulam South).*—I request you to bestow your attention to the Madras Act. We should give no room for any doubtful issue.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Can you find any provision which will not fit in with this scheme?

Mr. M. Sivarama Menon *(Ernakulam South).*—This Chapter XVI deals with several things. It is intended to cover all the incomes of the Act relating to licenses. Chapter XII deals with certain licenses. Because it appears in that chapter it may be stated that this section cannot be invoked for other licenses. It is only a mere transposition, not at all controversial.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I would readily accept the amendment if I were to be convinced. What are the licenses contemplated beyond Chapter XII?

Mr. M. Sivarama Menon *(Ernakulam South).*—There is license contemplated in section 172.

Mr. K. Achyuta Menon *(Diwan Peishkar).*—Does that section prescribe any fee?

Mr. M. Sivarama Menon *(Ernakulam South).*—The Council can prescribe fees.

Mr. K. Achyuta Menon *(Diwan Peishkar).*—How can you put this section in a place where the procedure alone is prescribed? How can you charge the fees?

Mr. M. Sivarama Menon *(Ernakulam South).*—The Council has got power.

Mr. K. Achyuta Menon *(Diwan Peishkar).*—It is not a charging chapter. There the procedure alone is prescribed.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I think that no change is required. There are the words 'under the provisions of this Act'. If those words are there I think there is no difficulty.

Mr. M. Sivarama Menon *(Ernakulam South).*—We shall wait for a decision. I press the amendment.

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Mr. President.—I suggest that you need not press the amendment now. You can discuss it if you find it necessary with the other members. If you want to move an amendment you can do it at the third reading of the Bill.

Amendment was, by leave, withdrawn.

Sections 289 to 321 were put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I beg to move the following amendment:—

Delete sections 322 and 323 and substitute for them the following:— '322. An appeal from any notice or order issued or other action taken or proposed to be taken by the Chairman or the Executive authority under the provisions of this Act shall in the first instance lie to the Municipal Council and the Council may pass such orders as it deems fit:

Provided that any person aggrieved by any notice or order issued or passed by or by any other act of a municipal council or its Chairman or executive authority under this Act may within 30 days from the date of such act or the promulgation or service of such order or notice appeal to the Diwan or such other officer as may be appointed by the Government in that behalf. The time occupied in obtaining copies of material papers in connection with the order, notice or act appealed against shall be excluded from computation of the said 30 days. The Diwan or other appellate officer may cause such orders on the appeal as he thinks fit and pending decision may direct the Council, Chairman or Executive authority to keep the proceedings in abeyance".

Now this amendment is intended to restore the provisions contained in section 203 of our existing Act. I may at once say that this provision does not in this form exist in the Madras District municipalities Act.

Dr. A. R. Menon *(Pallippuram).*—Will you kindly explain what the difference is?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—This deals with an appeal to the Diwan. A corresponding appeal does not exist in the Madras Act. There the appeal is to the Council. The Government have given their best attention to this amendment. Taking into consideration the circumstances prevalent and also the fact that after all such representative institutions are of recent origin in the State and also taking into consideration the rapid representations bearing

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upon municipal matters made by the public, Government thought it best to insist upon the inclusion of such a provision in the Act. I have had occasion to discuss with several non-official members of this House the question of the introduction of this amendment and I am glad to say that while in some cases. . . .

Mr. V. K. Krishnankutty *(Anthikad).*—Was it not discussed during the select committee stage?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—While some non-official members raised objection not distinctly we noticed that members coming from the various municipal areas were clamourous for the inclusion of such a provision.

In fact several cases have been brought to the notice of the Government and had it not been for the prompt intervention of the Government very serious calamities would have been caused.

Dr. A. R. Menon *(Pallippuram).*—I hope the Hon'ble Member will not be in a position to prove this. He is stating that the Municipalities are abusing the power. I hope that when he says this he is always reminded of the Mattancheri Municipal case.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—The Hon'ble Member himself is making an allegation.

Dr. A. R. Menon *(Pallippuram).*—What allegation?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I never mentioned Mattancheri. I am only aware of the existence of the Municipality of Mattancheri. I am speaking from the information obtained from the non-official members of this House. But if the Hon'ble Member from Pallippuram objects to hearing any more of the information that I got from the non-official members I shall certainly not indulge in it.

Dr. A. R. Menon *(Pallippuram).*—This private talk is very unhealthy.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—On one thing I am sure that all are agreed. As things are at present constituted nobody will never dare to say that things have not occured in Cochin Municipal administration that could not be condemned by any decent man including the Hon'ble Member for Pallippuram himself. What the Government are more anxious to see is that the citizens' rights, however

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poor they may be, are protected rather than to see the alleged so called prestige of certain members are maintained and supported. To the Government the rights of the meanest of citizens are more important. That fact the Hon'ble member for Pallippuram may remember. Hon'ble members should understand that this piece of legislation has been introduced after ascertaining the views of the public. Of course these powers are to be exercised only by the Government in appropriate and necessary cases. The existence of such powers will be a consolation for the citizen and it will also certainly impose confidence in the Government. When we have reached after some years that level of the Municipalities which are functioning elsewhere, certainly this power will be taken away. As matters are at present contituted the Government feel that they should have such a power. After hearing the Hon'ble members if any further explanation is necessary I shall do so then.

Dr. A. R. Menon (*Pallippuram*).—Is it a second appeal that is provided to the Diwan?

Mr. Thomas Manjuran (*Government Advocate and Law Officer*).—The first portion of the section says that an appeal shall lie to the Council in connection with any action taken or is proposed to be taken by the Chairman or executive authority. While a right of appeal has been provided in all cases mentioned in paragraph 1 to the Council itself a right of appeal in a slightly fewer cases is provided to the Diwan direct. When you say primarily it does not mean that it is a second appeal. It is an appeal which you may call as 'co-ordinate jurisdiction'. The second is introduced in the form of a proviso. Suppose the Municipal Council after mature deliberation has come to a decision in connection with a certain thing. The party may think that there is no chance of the order being reviewed by the Municipality. In that case an appea lgoes to the Diwan. This is not a second appeal that is provided to the Diwan.

Dr. A. R. Menon (*Pallippuram*).—Sir, I think the section is harmless. From the explanation of the Hon'ble Law Member I do not see any point of difference between the first and the second. I think firstly an appeal lies to the Council. If any party is aggrieved by the order of the Municipal Council he may prefer an appeal to the Diwan. If this is the sum and substance of the amendment, then I have not the least objection. The Law member while explaining the amendment was saying that the municipalities in Cochin are only in their infancy and, that

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such a provision is absolutely essential in the interests of municipal administration. I do not think . . . . .

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Such a provision is absolutely necessary.

Dr. A. R. Menon *(Pallippuram).*—After all you can extend this provision towards any man you like. If there is a feeling of co-operation between the Government and the Municipality things will work out smoothly. Otherwise the Government can at any stage obstruct the work of the Municipality. I have experienced it myself.

Mr. President —I have heard a number of petitions under this section and invariably I have refused to exercise my powers under that section before an appeal is laid to the Council. The Council may pass an order and the aggrieved party may want to prefer an appeal. It may so happen at times that the Municipality will be about to execute the order. It is only in exceptional cases where the Government is satisfied that injustice is being done that the Government interferes. I do not think that there is really anything dangerous in this.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—I do not think that this section is as innocent as it seems to be . . . .

Mr. President.—As a matter of fact if any Hon'ble Member wants to object to this it will be up to him to show that the present section has been abused by the Government. In fact the complaint has been that I have not exercised that power.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—If the members connected with the municipalities are satisfied then I do not want to oppose this amendment.

Amendment was put and carried thus carrying the new section 322.

Sections 324 to 340 were put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*— Sir, I rise to move to *delete section 341 and substitute for it the following:— '341. All costs, damages, penalties, compensation, charges, fees, expenses, rents (not being rents for lands and buildings demised by the Municipal Council), contributions and other sums which under this Act or any other law or rules or by-laws made thereunder or under any contract in respect of water-supply, or drainage made in accordance with this Act,*

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the rules or by-laws, are due by any person to the Council, may, if there is no special provision in this Act for their recovery, be demanded by a Bill as provided by rules for the recovery of taxes and recovered in the manner provided therein".

The amendment only says that suppose a municipality has rented out lands, the recovery of rents cannot be effected by invoking the summary powers. At first there was some misunderstanding on this but subsequently I understood from the member for Ernakulam South who is the Chairman of Ernakulam municipality that there is no objection to the adoption of such a course. This will only be in strict conformity with the Madras Act.

Mr. K. P. Kannan Nayar *(Secretary to Government).*—I second it.

Amendment was put and carried, thus carrying the new section 341.

Sections 342 to 346 were put and carried.

Mr. V. K. Krishnankutty *(Anthikad).*—The amendment standing in my name reads thus:— *In section 347 (1), line 4, between the words 'done' and 'in' insert the words 'or purporting to be done'.* This amendment is intended only to place the Municipal officers also on the same footing as Government servants. I move that the amendment may be accepted.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—There is already provision in the section for all imaginary cases. I do not think that there is any occasion for this amendment. The section itself says 'intended execution'.

Mr. V. K. Krishnankutty *(Anthikad).*—This is entirely different.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I do not think that this provision exists even in the Madras Act. No doubt it is quite true that this has been extended to Government servants in certain pieces of legislations.

Mr. A. Sankara Menon *(Trippunithura).*—Here the only question is whether a notice should be given before a suit is launched against Municipal officers. If such notice is not given the suit will be dismissed. I do not think that this amendment should be accepted. If the words 'purporting to be done' is added it will be rather extensive. A contention may be raised

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at the last moment in the written statement that the act was purported to be done and that a notice was necessary—if these words are added. The issue of notice should not be extended to acts purporting to be done.

Mr. V. K. Krishnankutty *(Anthikad)*.—I do not know what objection the Government has got in copying the Madras Act.

Amendment was put and lost.

Sections 347 and 348 were put and carried.

* **Mr T. A. Ramachandra Ayyar** *(Nellayi)*.—Sir, the amendment that I am going to move is this. *In section 349, insert the following at the end: 'And they shall be indemnified from all losses and expenses incurred by them in or about the discharge of their official duties, out of the Municipal Fund.'*

I happened to read a judgment of the District Judge of Trichur in O. S. 47/06. It was a suit for damages for alleged malicious prosecution, the defendants being the Trichur Municipal Council, its Chairman, and its certain officers. In that case in para 19 of the judgment the learned District Judge found that all the three defendants were entitled to the immunity granted by section 223 which is section 349 of this Bill and yet the learned District Judge did not allow costs to all the three defendants. If cost is not allowed where is the immunity. It is clear from the section that one will be entitled to the immunity granted by it only if one acts, lawfully, in good faith and with due care and attention. So it is a case where the Mnnicipal officers have acted lawfully and in good faith and yet no immunity has been granted. Therefore it seems to me that the immunity section is not clear and it was not clear at any rate to the District Judge also. So I thought it my duty to move this amendment.

Dr. A. R. Menon *(Pallippuram)*.—I know as a matter of fact that immunity was granted by this section.

Mr. T. A. Ramachandra Ayyar *(Nellayi)*.—That section was not clear even to the District Judge nor to me. These Municipal Officers had to pay costs from their own pockets.

Dr. A. R. Menon *(Pallippuram)*.—May I know which is the case?

* Speech not corrected by the Hon'ble Member.

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Mr. T. A. Ramachandra Ayyar *(Nellayi).*—O. S. 47/06.

Dr. A. R. Menon *(Pallippuram).*—I think the District Judge awarded costs. But these Municipal Officers claimed their actual costs and perhaps that might have been refused.

Mr. T. A. Ramachandra Ayyar *(Nellayi).*—In that case in para 22 the reason assigned by the District Judge for disallowing costs to the successful defendants is that the Chairman has acted carelessly, recklessly and that a respectable citizen has been unnecessarily oppressed by the Chairman. If the Municipal officer oppresses a respectable citizen he should not be given protection under this section. In this case a respectable citizen has been unnecessarily harassed and so with your permission, Sir, I move the following further amendment:—

'Provided this section shall not apply if an officer acts carelessly and recklessly and causes oppression to a rate-payer'.

Dr. A. R. Menon *(Pallippuram).*—I know the case which he is referring to. In that case the court awarded costs. The claimants claimed excess claims. All the expenses claimed by the parties were not allowed. An appeal was preferred to the Diwan. The Diwan referred the matter to the Council. The Council thought that they were not justified in granting anything more than what was decreed by the Court. That is what took place.

Mr. President.—By the speech and the amendment he has now moved he wants to protect the interest of the public also.

Amendment was put and lost.

Sections 349 to 369 were put and carried.

The House rose for lunch at 1—25 p. m. and re-assembled at 2-30 p. m. with the Deputy President (M. R. Ry., A. Sankara Menon Avl. B. A. & B. L.) in the Chair.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—Sir, with your leave, I may be permitted to move the amendment standing in the name of Mr. Narayana Menon as he is absent and as he has authorised me to move the same on his behalf.

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Deputy President.—His amendment is to omit the Schedule. I think that can be done by the Hon'ble Member himself in moving his amendment.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—Then I will move my amendment. Sir, my amendment reads as follows:—

The existing schedule I may be deleted and the following shall be substituted as Schedule I.

"Companies shall be assessed by the Executive Authority on the following scale:—

		Net half-yearly income			*Half-yearly tax.*
		Rs.		*Rs.*	*Rs. As Ps.*
A.	*More than*	*21,000*			*250—0—0*
B.	,,	*12,000*	*but not more than*	*21,000*	*150—0—0*
C.	,,	*6,000*	,,	*12,000*	*55—0—0*
D.	,,	*3,000*	,,	*6,000*	*20—0—0*
E.	,,	*1,200*	,,	*3,000*	*6—0—0*
F.	,,	*300*	,,	*1,200*	*1—8—0*
G.	*Less than*	*300*			*0—8—0"*

Mr. V. K. Krishnankutty *(Anthikad).*—The companies tax has been taken away.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—It still exists because the amendment carried is that with the previous sanction of the Government companies can be taxed. In place of the existing Schedule I propose to have the schedule that I have just now read out. Amendment No. 55 moved in connection with section 80 is related to this Schedule. That amendment will be seen to be connected with the present amendment which speaks to you about the rates. What was stated yesterday was that the amendment I proposed to section 80 to substitute 'net income' for 'capital or funds can be considered along with this amendment which speaks to you about the rates. My submission in moving this amendment is to assess a company on its net income which I think is a more equitable thing than assess the same company on its paid up capital. I do not think that the Municipalities also can raise any objection to this because the net income produced by a company will have a direct bearing upon this paid-up-capital and the work that the company carries on. There

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is no justification for a company being taxed upon its paid up capital if actually in a particular year for reasons over which the company has no control it is not able to make any appreciable income. In such lean years also, if the present Schedule is to stand, the Company will have to be taxed on the paid-up-capital. That certainly is not equitable. In the schedule of taxation enunciated here as will be seen from the schedule it is on the profits earned by a company that the taxes are to be calculated. It is this view that I have to place before the House for its consideration. I hope the Hon'ble Members of the House who are connected with the Municipal administration and who have to spend the income received from such sources for the amenities of the people will not oppose this amendment. Therefore I hope to get the unanimous support for this amendment from the whole non-official section and being a very equitable one I hope to get the support from the Government as well.

Amendment was lost for want of a seconder.

Schedules I to VIII were put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*— I move that *wherever reference is made in the Bill to Cochin enactments as 'Regulation' substitute the word 'Act'.* This is necessitated on account of the recent Proclamation styling our enactments as 'Acts'.

Mr. M. Sivarama Menon *(Ernakulam South).*— I second it.

Amendment was put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—In view of the deletion of some sections of the Bill, with your permission, Sir, I move *to re-number the sections of the Bill as to eliminate the numerical plus alphabetical numbering of sections (such as 37A, 63A, 63B) introduced by the above mentioned amendments and also in view of the deletion of section 323 and some other sections of the Bill and re-number the cross-reference in the Bill and the section numbers in the Schedules, wherever necessary so as to fit in with the re-numbering of the sections.*

Mr. K. P. Kannan Nayar *(Secretary to Government).*— I second it.

Amendment was put and carried.

Sections 1 and 3 were put and carried.

Title and Preamble were put and carried.

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Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I move that the Bill may be taken up and finally passed day after tomorrow.

Mr. K. P. Kannan Nayar *(Secretary to Government).*—I second it.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—Day after tomorrow is a non-official day.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*— This will not take much of the time.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—There are amendments allowed to be moved even at the third reading.

Mr. M. Sivarama Menon *(Ernakulam South).*—They are all non-controversial amendments.

Deputy President.—Anyhow the objection can be made day after tomorrow when the motion is before the House.

Dr. A. R. Menon *(Pallippuram).*—My submission is that there are very many people who are anxious that this Bill should be passed as early as possible.

Deputy President.—If the motion is carried now the Diwan can set apart a portion of the non-official day for this work. He alone has got the power to do it.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—That power is not given to the Diwan.

Deputy President.—The motion before the House is that the Municipal Bill may be taken up and passed day after tomorrow.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*— I rise to a point of order. The point of order is this. There is no motion in the agenda for the third reading of the Bill. It is only in your discretion by waiving the S. O. that you can give them the right. We may be given an opportunity to make a speech to make our position clear.

Deputy President.— The rule says that the member in charge of the Bill can move that the Bill be taken up and finally passed and I allow it.

Motion was put and agreed to.

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Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—A poll, Sir.

POLL.

Ayes.	Noes.
Mrs. Meenakshi N. Menon.	Mr. K. M. Kunhi Moideen
Mrs. D'souza Williams	,, K. M. Ibrahim.
Mr. P. Govinda Menon.	,, P. Kumaran Ezhuthassan
,, M. Sivarama Menon.	
,, A. Sivarama Menon.	
,, P. C. Varckey.	
,, George Parakkal.	
,, V. K. Kutty	
,, A. V. Moothedan	
,, K. S. Manickam.	
,, P. J. Alexander	
,, K. Kunjirama Menon.	
,, M. A. Sankunny.	
,, V. S. Krishnan Vaidyan.	
,, K. P. Kannan Nayar	
,, K. Achyuta Menon	
,, P. J. George	
Rao Sahib I. N. Menon.	
,, K. Narayana Menon	
Mr. T. Narayana Menon	
,, A. L. Devassy	
,, Thomas Manjuran	
,, K. Krishna Warriar	
,, V. K. Achyuta Menon	
,, Rama Varmha Tampuran	
Dr. D. Raghavendra Rao	
,, A. R. Puduval	
Mr. V. K. Aravindhaksha Menon	

Neutrals.

Mr. V. K. Krishnankutty

,, K. S. Panickar

Motion was therefore carried.

The Cochin Income-tax Act Amendment Bill.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, with your permission, I would rather not present the report of the Select Committee on the Cochin Fisheries Bill first as it is likely to be a controversial measure. There are other pieces of legislation which we are anxious to get through. If we have time we shall take it later on. With

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